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In the Matter of:

Advanced Television Systems and  
Their Impact Upon the Existing  
Television Broadcast Service

MM Docket No. 87-268

To: The Commission

**COMMENTS OF  
ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS  
AND THE PUBLIC BROADCASTING SERVICE ON  
FOURTH FURTHER NOTICE OF PROPOSED RULE MAKING**

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### **Summary of Argument**

The development of digital ATV holds great promise for the continued growth and development of public broadcasting. With its emphasis on culture, arts, nature, travel, science, history, and a variety of documentary programs, public television's programming and educational services will be greatly enhanced by the superior picture clarity, digital sound and broader range of artistic options made possible by HDTV technology. In addition, ATV technology's capability to transmit multiple program and ancillary services simultaneously opens up exciting new opportunities for public broadcast stations to enhance their educational program services and generate additional revenues to support their noncommercial operations.

Public television stations will be able to realize their vision of ATV technology, of course, only if they have sufficient funds to support their general operations and finance the very costly transition to ATV. Given the current governmental funding climate, this will be a daunting challenge.

The public television community is committed to the conversion to ATV and is working hard to devise creative solutions to its long-term funding problems that will make conversion to ATV operations possible. In response to requests from members of Congress, Public Television recently offered a legislative proposal that would, it is hoped, replace the present system of Federal appropriations with a new funding source for both ATV conversion and public broadcasting operations. The proposed legislation, which is under serious consideration by Congress, would establish a mechanism for aggregating and sharing public broadcasting's ATV spectrum and using excess ATV capacity to raise revenues to support

(1) the continued operation of public television and radio stations, (2) the transition to ATV operations, and (3) the transition of noncommercial radio to digital transmission.

The timing of the comment cycle in this proceeding requires Public Television to address the important regulatory issues raised by the Commission -- the resolution of which will have a major impact on noncommercial television for years to come -- before the fate of the legislative proposal is determined. While passage of the legislative proposal is by no means certain, Public Television describes in these Comments its vision of how ATV will enhance the services offered by public television stations, how the legislative proposal will enable public television to make that vision a reality, and what regulatory relief the Commission could accord noncommercial stations to advance their legislative goals and enable them to fulfill their noncommercial educational mission in the digital era.

The Commission should allocate 6 MHz channels for ATV. HDTV, a core element of ATV service, will require the entire 6 MHz channel. Allocation of less than 6 MHz would retard the development of HDTV in the U.S. and cripple this country's leadership position in digital technology.

Eligibility for ATV licenses should be limited to existing broadcast licensees, permittees, and applicants. In addition, the Commission should pair all vacant noncommercial allotments with an ATV channel, provided it can do so without precluding ATV assignments to existing broadcasters. Noncommercial broadcasters have the expertise to transition to digital service quickly and efficiently, they have demonstrated their commitment to do so, and they have an excellent record of public service that could continue in the digital era only if they are granted ATV licenses.

The proposed legislation would necessitate that noncommercial stations receive separate licenses for their NTSC and ATV facilities. Under that legislation, some ATV transition channels would be shared by multiple noncommercial licensees, and thus could not be paired with a single NTSC license. In addition, other ATV channels would be leased or auctioned to generate revenue to fund public broadcasting operations and ATV conversion; those channels would not be associated, and could not be paired, with any NTSC channel.

Sound business judgment will prompt television stations to simulcast much of their NTSC programming, and there is thus no need to impose a rigid simulcast requirement. If the Commission nonetheless decides to adopt such a requirement, it should exempt all ATV channels that are shared during the transition period by multiple noncommercial stations. Any requirement that sharing stations simulcast all of their NTSC channels would effectively preclude the use of the shared ATV channel for HDTV programming, contrary to public policy and, presumably, the Commission's intent.

Similarly, it is not necessary for the Commission to impose a minimum HDTV programming requirement. There is every reason to believe that noncommercial and commercial broadcasters alike will broadcast an increasing amount of HDTV programming in response to viewers' desires and expectations. Moreover, it would be counterproductive for the Commission to artificially constrain public television stations in making the fullest use of this flexible technology by dictating the kinds of programs they must broadcast. If the Commission nevertheless decides to impose a minimum HDTV requirement, it should liberally waive that requirement for noncommercial stations -- particularly those that share an ATV channel during the transition -- which demonstrate that adherence to the requirement

would impair their ability to deliver the full range of program services necessary to serve the needs of their communities.

The Commission should permit ancillary broadcast and non-broadcast services to develop in response to market demand. Noncommercial licensees should be allowed to make full use of digital compression and multiplexing technology to provide ancillary services to complement their noncommercial broadcast services and to raise revenue to support their nonprofit operations and the conversion to ATV. Any spectrum fees imposed on revenues from ancillary services should either be waived entirely or reduced to the minimum amount allowed by statute for public television stations, provided such revenues are used to support their noncommercial operations.

In light of the financial constraints under which they operate, noncommercial stations should have great flexibility in the ATV application and construction process. Relaxing, or even eliminating, the financial qualifications requirement is a step in that direction. In addition, noncommercial stations should be subject to a less demanding construction timetable; they should only be required to construct and begin operating ATV facilities some time prior to the ultimate conversion deadline.

It is premature for the Commission to decide when the ATV transition should end. Under any transition scenario, noncommercial stations should be afforded flexibility to convert to full-time ATV operation on their NTSC channels at any time during the transition period. Stations that share an ATV transition channel may wish to broadcast their entire prime time schedule in HDTV, for example, and could not do so while sharing an ATV

channel with other stations. Other stations may wish to convert early to reduce the financial burden of dual operations.

The language and policies underlying the must-carry rules require the carriage of both NTSC and ATV channels. Moreover, carriage of both channels will facilitate an orderly and rapid transition to ATV, recovery of commercial spectrum, and repacking of spectrum, in accordance with FCC policy. The other regulatory measures proposed by the Commission in this proceeding would be far less effective in facilitating the transition to ATV if cable operators could effectively deny broadcasters access to 66% or more of the television audience. Thus, carriage of both NTSC and ATV is necessary if the transition envisioned by the Commission -- during which viewers will continue to have access to existing broadcast services while the industry and consumers migrate to a digital environment -- is to be a true transition.

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<b>To: The Commission</b>	)	

**COMMENTS OF  
ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS  
AND THE PUBLIC BROADCASTING SERVICE ON  
FOURTH FURTHER NOTICE OF PROPOSED RULE MAKING**

The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") (collectively referred to as "Public Television") submit these comments in response to the Commission's Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry released August 9, 1995 ("Fourth Notice") in the above-captioned proceeding.<sup>1/</sup>

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<sup>1/</sup> Public Television has actively participated in all phases of this proceeding. In addition to their numerous comments filed individually and jointly, APTS and PBS also joined in the comments filed by a broad coalition of terrestrial broadcast stations and networks (the "Broadcasters") at earlier stages of this proceeding. While Public Television continues generally to support the positions taken by the Broadcasters for commercial broadcasters, the possible passage of a pending legislative proposal discussed below would require distinct treatment of noncommercial stations with respect to many of the regulatory issues raised by the Commission in the Fourth Notice. For that reason, Public Television has not joined in the Comments filed by the Broadcasters today, but endorses in these Comments their positions on many particular issues.



## **I. Introduction**

The development of digital ATV -- the broadcast distribution technology of the future -- holds great promise for the continued growth and development of public broadcasting.<sup>2/</sup> With its emphasis on culture, arts, nature, travel, science, history, and a variety of documentary programs, public television's programming and educational services will be greatly enhanced by the superior picture clarity, digital sound and broader range of artistic options made possible by HDTV. Moreover, digital ATV technology, which is capable of simultaneously transmitting multiple program and ancillary services, will also further public television's mission of providing educational programming. For these reasons, Public Television is committed to the successful transition to ATV.<sup>3/</sup>

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<sup>2/</sup> Congress has declared that it is in the public interest "to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes." 47 U.S.C. § 396(a)(1) (1991). Congress has also made a specific policy finding that "it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services *through all appropriate available telecommunications distribution technologies.*" 47 U.S.C. § 396(a)(9) (Supp. 1995) (emphasis added).

<sup>3/</sup> As the Commission is aware, PBS has played an active role in industry efforts to select and implement an ATV system, including playing a major role in the ATV Advisory Committee's testing and evaluation efforts and conducting cost and transition studies. PBS is a charter member of the Advanced Television Test Center and oversaw the field tests of the Grand Alliance System. Further, PBS (in conjunction with the National Association of Broadcasters) recently published a handbook for distribution to its member stations entitled *Advanced Television Transmission -- Planning Your Station's Transition*. This handbook is designed to assist station managers and engineers in developing a plan to provide ATV service, and covers issues such as acquiring new ATV tower capacity, antennae, transmission lines and transmitters.

However, as the Commission has acknowledged, "noncommercial licensees will face unique problems in their transition to ATV . . . chiefly in the area of funding, where noncommercial broadcasters appear to be subject to the vagaries of forces and parties beyond their control."<sup>4/</sup> Accordingly, the Commission has invited public broadcasters to comment on what special relief should be accorded noncommercial stations not only to "permit them to participate in the channel assignment process on an equitable basis," but also "to minimize restrictions on their operations and allow them greater flexibility."<sup>5/</sup>

Public Television welcomes the opportunity to address the many complex issues raised by the Commission in the context of the unique funding problems faced by the nation's noncommercial stations. As the Commission is aware, Public Television is working hard to find solutions to these problems and has recently submitted to Congress a legislative proposal to replace the current federal funding structure with a more secure, long-term funding mechanism. While passage of the legislative proposal is by no means certain, Public Television describes in these Comments its vision of how ATV would enhance the services offered by public television stations, how the legislative proposal would permit public television to make that vision a reality, and what regulatory relief the Commission could accord noncommercial stations to advance their legislative goals. A thoughtful resolution of the issues raised by the Commission will enable noncommercial broadcasters to continue serving the public interest and to fulfill their educational mission well into the 21st century.

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<sup>4/</sup> Fourth Notice at ¶ 73.

<sup>5/</sup> Id. at ¶¶ 74, 76.

**A. Public Television's Vision of ATV**

Chairman Hundt asked in a recent speech:

[W]ill we be able to use this new TV, whatever we call it, not only to entertain our families, but also to educate our children, participate in political debate, gain knowledge, enrich our lives?<sup>6/</sup>

Public Television's answer is yes. If noncommercial television stations receive the funding and regulatory support needed to transition to ATV, they will use ATV technology to advance their mission of educating and enlightening the American public and encouraging public discourse. A few of the potential uses of ATV technology by public television stations are described below.

**(1) HDTV Programs**

Public television's most widely recognized, nationally distributed programs would be spectacular if broadcast in HDTV. If public television's science and technology series *NOVA*, for example, were broadcast in high definition, audiences could explore in amazing, microscopic detail the inner workings of the human body or view with breath-taking, telescopic clarity the vast expanses of the universe. Similarly, natural history specials on *Nature* and *National Geographic*, covering many aspects of zoology, botany, ecology, geography and anthropology, would take on new dimensions with the advent of HDTV.

With the wide screen format of HDTV capturing the entire performing stage and CD quality, digital surround sound recreating the music without distortion, HDTV broadcasts of performing arts programs -- including ballet, drama, modern dance, musical theater, musical

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<sup>6/</sup> Speech by Chairman Reed Hundt to Industry Leadership Conference, Information Technology Association of America, Nashville, Tennessee, October 9, 1995.

recitals, symphony and opera, featured on such programs as *Great Performances*, *Live from Lincoln Center* and *The Metropolitan Opera Presents* -- would give home audiences the feel and impact of live performances. HDTV would allow the passionate voices of *The Three Tenors*, for example, to fill the living rooms of music lovers across the nation, as the program is broadcast live against a backdrop of high definition, panoramic shots of the famous Baths of Caracalla and other majestic scenery of Rome. This advance in performing arts programs would doubtless be enjoyed by all viewers, especially those who are unable to attend live performances.

Shows such as *Masterpiece Theatre* and *The American Experience*, broadcast in HDTV format, would give viewers the theatrical experience that is often associated with wide screen video and surround sound. With their creative genius, the directors and producers of these and other public broadcasting programs will undoubtedly utilize the enhanced clarity of HDTV to invent new techniques of cinematography or produce yet-to-be-imagined dramatic effects.<sup>7/</sup>

In short, public television stations will utilize the enhanced clarity and powerful new impact of HDTV to continue to bring the best in world culture and education to audiences of all ages.<sup>8/</sup>

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<sup>7/</sup> Many local programs, produced by noncommercial television stations or acquired from public television networks, would likewise benefit from ATV technology. For example, some of public television's best locally-produced travel shows, produced in HDTV, could better capture the sights and sounds -- or even the mood -- of a particular locale.

<sup>8/</sup> HDTV programming could also be combined with nonbroadcast services to provide new and creative opportunities for classroom learning. For example, public television stations currently provide "electronic field trips" allowing students to experience the virtual reality of  
(continued...)

(2) **Lifelong Learning Services**

For over a quarter of a century, public television stations have used available technologies to help learners of all ages achieve their educational and career goals. Along with public schools, colleges, and libraries, public television stations serve as an essential educational institution in communities across this country. Children learn their alphabet from *Sesame Street*, rural high school students take distance learning courses in advanced math and foreign languages, high school drop-outs earn their GED through public broadcasting and then go on to earn a college degree through broadcast telecourses, and workers upgrade their skills through live, interactive videoconferences. Every day, millions of Americans learn a multitude of disciplines and skills through public television services.<sup>2/</sup>

ATV technology will allow public television stations to further expand access to critical learning opportunities for all Americans at home, in schools and colleges, and in the workplace. Because broadcasters could transmit multiple channels of SDTV programming using ATV technology, noncommercial stations could simultaneously deliver focused educational programming and services that address the specific needs of different types of learners:

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<sup>8/</sup>(...continued)

a live field trip and "travel" to places that they might never have an opportunity to visit. The virtual reality of these "electronic field trips" would be substantially enhanced by the use of HDTV and interactive computer technology.

<sup>9/</sup> Public television stations' commitment to using new technologies for education has never been stronger. A new Learning Ventures division was recently formed at PBS for the specific purpose of expanding and coordinating the use of technologies for education. The division has already established a vibrant presence on the Internet's World Wide Web to enhance learning opportunities for public television viewers, teachers and students.

- **Instructional programming.** Multiplexing ATV channels will allow stations, currently constrained by channel capacity, to deliver the kinds of instructional programming, in conjunction with local colleges and universities, that is currently offered predominantly by state networks and stations with ITFS capacity. With the additional ATV capacity, for example, the distance learning courses in advanced subjects, now offered to high school students in 28 states through a public television consortium, could be significantly expanded.
- **"Ready to Learn".** These services are dedicated to programming for discrete age groups, such as pre-school children, elementary school children and teenagers, as well as the adults who care for and/or educate them. Age appropriate programs for children and teenagers could be broadcast during the day, while programs of interest to parents, caregivers and educators could be broadcast at night.<sup>10/</sup>
- **"Ready to Earn".** These services help Americans gain the skills and knowledge needed to compete in the global economy by connecting school-based learning to the world of work and helping adults overcome illiteracy, learn English, obtain their GED, earn college degrees, and upgrade their knowledge and skills as workers. WTVS, in Detroit, for example, currently relies on a partnership with local cable systems to transmit basic skills and job related information from state agencies to viewers. With multiplexed ATV capacity, public television stations throughout the country could distribute these types of national and locally-based services using their own broadcast facilities.
- **"Ready to Teach".** These services could provide innovative new approaches to improving the quality of teaching and learning in schools. Public television stations could take advantage of ATV's capabilities to provide a 24-hour service to schools that could include extensive professional development opportunities to help teachers improve their knowledge and instructional skills and to provide them with resources and materials for use in the classroom.

### (3) Ancillary and Supplemental Uses

Digital ATV will also permit ATV licensees to transmit ancillary nonbroadcast services while broadcasting multiple channels of SDTV programs. This technology opens up

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<sup>10/</sup> While the majority of school-age children are in school during the day, there appears to be a growing interest in home-schooling. The Ready to Learn service could also allow public television stations to serve the needs of this segment of the population.

exciting new possibilities for public broadcasters to augment their broadcast services, consistent with Congressional policy "to encourage the growth and development of *nonbroadcast* telecommunications technologies for the delivery of public telecommunications services."<sup>11/</sup>

Public television stations could provide ancillary services designed to enhance their instructional programming offered at the national, state and local levels. Using digital transmission capability, public television will be able to distribute program-related course materials, textbooks, student and teacher guides, computer software and content areas of the World Wide Web to students and faculty, concurrently with the broadcast of instructional programming.

Public television stations could also use ATV capacity, on an ancillary and supplementary basis, to serve as public telecommunications centers to better meet education, health, and social services needs of their local communities. Public television stations could join in partnerships with state agencies, hospitals, libraries and other community organizations to provide training seminars, health and human services information, and a wide variety of other services. Such partnerships, made possible by the increased distribution capacity, could provide needed community services as well as generate additional revenue for public television stations.

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<sup>11/</sup> 47 U.S.C. § 396(a)(2) (1991).

**B. Public Television's Funding Crisis**

Public television stations will be able to realize this vision of the ATV world, of course, only if they have sufficient funds to support their general operations and the conversion to ATV. As the Commission is aware, noncommercial stations depend on federal and state funding to provide the seed money for their operations. Their remaining funding comes from voluntary contributions from viewers and grants from corporations and foundations. While the relative mix of funding sources varies with the type of licensee,<sup>12/</sup> federal funding sources comprise approximately 14% of the total funding for public television, while state and local appropriations account for approximately 22%. Further, the Public Telecommunications Financing Program ("PTFP") has funded an even larger percentage of the costs of public broadcasting's existing facilities.<sup>13/</sup>

It is no secret that Public Television's federal appropriations are in jeopardy. Current Congressional leaders have expressed their intent to eliminate annual Federal appropriations and have asked public broadcasters to propose a plan for continued public broadcasting services without such appropriations.

Given the current governmental funding climate, noncommercial stations face a daunting challenge in continuing their current operations and financing the very costly transition to ATV. As the video marketplace transitions to digital services, noncommercial stations that are unable to finance that transition will be relegated to the "back of the

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<sup>12/</sup> See Comments of America's Public Television Stations, the Corporation for Public Broadcasting and the Public Broadcasting Service in this proceeding dated January 7, 1993 ("1993 Public Television Comments"), at 3-5 and Ex. 2.

<sup>13/</sup> See id. at 4-6.



technological bus" during the transition. Under these circumstances, public television stations would likely lose viewers, and thereby lose viewer contributions, corporate underwriting and foundation grants. Thus, the failure to convert to ATV would result in a devastating downward spiral for noncommercial stations, resulting ultimately in the loss of their current services and the failure of the noncommercial sector to realize the promise of ATV technology.

**C. Public Television's Legislative Proposal**

In response to requests from members of Congress, Public Television recently offered a legislative proposal that would eventually replace the present system of Federal appropriations with a new funding source for both ATV conversion and public broadcasting operations. The proposed legislation, which is under active consideration by Congress, would recognize the creation of a Public Broadcasting Investment Fund (the "Fund"), and direct the Commission to assign to the Fund, under an ATV allotment plan, all of the ATV channels that it would otherwise assign to public television stations, as well as all vacant noncommercial NTSC allotments and the ATV channels paired with those allotments.

The Fund, in turn, would be required to assign one ATV channel in each service area for noncommercial ATV use to assure that the ATV spectrum is used to deliver the range of noncommercial services currently provided in the service area. Where there is only one public television station in a service area, the ATV channel would be assigned to that station. Where there are multiple public television stations in a service area, those stations (referred to herein as the "Joint Operating Stations") would be required to enter into a cooperative arrangement under which they would share the use of a single ATV channel during the

transition period. In service areas where the ATV channel is shared, the channel might be used during the day to deliver several channels of instructional, childrens' and general interest programming originated by several licensees in the market, while in the evening it might transmit HDTV programming distributed by PBS or other program services. Alternatively, the channel might be used to deliver the multiple licensees' complete broadcast schedules in an SDTV format.

The Fund would also be authorized to lease or auction any ATV spectrum that remains in the Fund after the assignment of channels to be used for ATV service during the transition, subject to appropriate interference protection for other broadcast stations.<sup>14/</sup> The Fund's goal would be to raise the maximum amount of revenue to support (1) the continued operation of public television and radio stations, (2) the transition to ATV operations, and (3) the transition of noncommercial radio to digital transmission. When the principal in the Fund exceeds \$4 billion, which is the estimated minimum amount deemed necessary to support the operations of public television and radio stations and finance the transition to ATV and digital radio transmission nationwide, Federal appropriations would cease. Any amount in the Fund in excess of \$4 billion would be split 50/50 with the U.S. Treasury.

Throughout the ATV transition period, noncommercial stations would utilize their ATV channels (either individually or collectively) to provide HDTV and other program services. At the end of the transition period, those stations assigned a transitional channel would convert to ATV-only operations on either their transitional ATV channel or, if feasible,

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<sup>14/</sup> Under the proposed legislation, the Commission would grant licenses to entities that lease or purchase spectrum from the Fund and enforce all rules and regulations associated with the licensed operation.

on their NTSC channel.<sup>15/</sup> Their other channel (or a substitute channel assigned by the Commission under a repacking plan) would be assigned to the Fund for long-term revenue-generating purposes. In markets where multiple stations share a single ATV channel, each station that does not receive a transitional ATV channel could convert to ATV operations on its NTSC channel (or a substitute channel assigned by the Commission under a repacking plan).<sup>16/</sup>

The virtue of this legislative approach is that a portion of public broadcasting's ATV spectrum -- aggregated on a national basis and auctioned or leased under a flexible use provision -- would provide public broadcasting with an opportunity to begin to replace current Federal appropriations and finance public broadcasting's transition to ATV. Further, the proposal would allow stations with modest financial resources time to transition to ATV without compromising the quality or quantity of their program services.

The timing of the comment cycle in this proceeding requires Public Television to address the important regulatory issues raised by the Commission -- the resolution of which will have a major impact on noncommercial television for years to come -- before the fate of this legislative proposal is determined. Therefore, for purposes of these Comments, Public

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<sup>15/</sup> See Broadcasters Comments, Section IV.B.

<sup>16/</sup> A schematic diagram illustrating the ATV transition of both those noncommercial stations that are assigned their own ATV transition channel and those that share a transition channel is attached as Exhibit A.

Television will set forth its position on the issues raised by the Commission in light of the pending legislative proposal.<sup>17/</sup>

## **II. Comments on Fourth Further Notice of Proposed Rulemaking**

### **A. Initial Licensing Issues**

#### **(1) Spectrum**

Public Television supports the Broadcasters' view that the Commission should allocate 6 MHz channels for ATV. Public Television firmly believes that HDTV will be a core element of ATV service. HDTV transmissions will require the entire 6 MHz channel. Greater spectrum efficiency in HDTV technology is not possible in the foreseeable future and allocation of less than 6 MHz of spectrum would retard the development of HDTV in the United States and cripple the global leadership position in digital technology currently enjoyed by the United States.

#### **(2) Eligibility**

Public Television supports the Commission's determination to limit eligibility for ATV channels to existing broadcast licensees, permittees, and applicants and, in addition, to pair all vacant noncommercial allotments with an ATV channel, unless there is no feasible alternative

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<sup>17/</sup> While passage of the proposal is by no means assured, it is being seriously considered in Congress. The Senate Commerce Committee Report on the 1995 Budget Reconciliation Bill discusses key elements of Public Television's ATV funding proposal. Further, that Report directs the FCC to conduct a study on ATV issues and to assume, for purposes of that study, "that noncommercial broadcast spectrum would be used to support public broadcasting." Senate Report at 103. Public Television is actively working with the Senate leadership toward the introduction of its ATV funding proposal, and is hopeful that a bill will be introduced before the end of the year. If the legislative proposal is not adopted, Public Television will address the issues raised in the Fourth Notice, outside of the context of the legislative framework, in reply comments or will seek leave to file supplemental comments.

for assigning an ATV channel to an existing broadcaster.<sup>18/</sup> As the Broadcasters observe, existing broadcast stations have the expertise to transition to digital service quickly and efficiently, and they have demonstrated their commitment to doing so. Broadcasters also have a record of service in the public interest, and the assignment of ATV channels to existing broadcasters is necessary to assure that they can continue providing such service in the digital age. These rationales apply with even greater force to noncommercial television stations, given their contributions to the development of ATV, commitment to HDTV programs, and history of serving the public interest.<sup>19/</sup>

(3) **Paired or Unitary Licenses**

The Commission seeks comment on whether a station's NTSC and ATV licenses should be issued as a single unified license or should be treated as a pair of separate licenses for administrative purposes.<sup>20/</sup> The Commission has tentatively concluded that it would ease

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<sup>18/</sup> See Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making, 7 FCC Rcd 6924, 6950 (1992) ("Third Report and Order"). Many noncommercial broadcasters use translator stations to provide coverage within their Grade A and B coverage contours, particularly in areas shadowed by mountainous terrain. Congress has specifically encouraged noncommercial broadcasters to serve all of the nation's viewers, and they have operated translator stations as a financially efficient means of satisfying that directive. Public Television will urge the Commission, in response to its Further Notice addressing allocation issues, to allocate ATV spectrum for existing noncommercial translators that are necessary to provide coverage within noncommercial stations' Grade B contours and to avoid ATV allotments that will cause interference to existing noncommercial NTSC translators, to the extent possible.

<sup>19/</sup> See Section I supra.

<sup>20/</sup> See Fourth Notice at ¶¶ 44-47.

administrative burdens to issue a single unified license to each station, and the Broadcasters support that position.<sup>21/</sup>

While Public Television supports grant of a single unified license to commercial broadcasters, the proposed legislation would necessitate that noncommercial stations receive separate licenses for their NTSC and ATV facilities. The legislation would direct the Commission to assign the noncommercial ATV channels to the Fund, which would then assign one ATV license in each service area to a noncommercial station. In service areas with more than one noncommercial station, that ATV channel would be shared. The remaining channels would be leased or auctioned by the Fund to raise revenues to support public broadcasting.

The channels to be used for revenue-generating purposes would not be associated, and could not be paired, with any NTSC channel.<sup>22/</sup> In addition, channels that are shared by several noncommercial stations in the same market could not be paired with a single NTSC license because the shared ATV channel would be used by multiple NTSC licensees under a joint operating agreement.<sup>23/</sup> Thus, for example, if the NTSC license of one of the stations sharing an ATV channel were terminated or not renewed, the ATV license would still have to

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<sup>21/</sup> See *id.* at ¶ 46.

<sup>22/</sup> The selection of frequencies for these revenue-generating channels would depend on the allotment/assignment approach adopted by the Commission. Public Television continues to support the Broadcaster's position that the Commission should adopt a paired NTSC/ATV channel allotment plan. See Broadcasters' Proposed ATV Allotment/Assignment Approach, MM Docket No. 87-268 (January 13, 1995).

<sup>23/</sup> Even the ATV channels to be utilized by a single noncommercial station during the transition would initially be assigned to the Fund, and thus could not be issued by the Commission as a unitary license.

continue in effect for use by the other noncommercial stations in the market. Consequently, Public Television urges the Commission to issue separate ATV licenses for noncommercial ATV spectrum.

**B. Use of ATV Spectrum**

**(1) Simulcast Requirement**

In earlier phases of this proceeding, the Commission tentatively decided to require that licensees simulcast on their NTSC channels the programming offered on their ATV channels. The rationale for this requirement was twofold: to avoid prematurely depriving those viewers who do not own digital sets of new programming, and to facilitate the recapture of one of the two 6 MHz channels by discouraging the development of two separate program services, each with its own constituency.<sup>24/</sup>

Advances in ATV technology permitting transmission of multiple SDTV program services have caused the Commission to revisit this issue. The Commission has concluded that it would be technically impossible for a licensee to simulcast on its NTSC channel four separate program services broadcast on its ATV channel.<sup>25/</sup> Therefore, it has proposed a modified requirement that all programming broadcast on a station's NTSC channel be simulcast on "a program service of the ATV channel."<sup>26/</sup> This simulcast requirement, unlike

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<sup>24/</sup> See Fourth Notice at ¶¶ 37-38.

<sup>25/</sup> See id. at ¶ 39.

<sup>26/</sup> Id. at ¶ 41. The Commission apparently does not propose requiring that the simulcast programming be transmitted in HDTV on the ATV channel.

the one proposed earlier, is designed to speed the migration of consumers from analog to digital broadcasting.<sup>27/</sup>

Public Television agrees with the Broadcasters that sound business judgment will prompt television stations to simulcast much of their NTSC programming. First, programming is expensive, consuming a substantial portion of every broadcaster's budget. Simulcasting will keep those costs down by avoiding the need to produce or acquire programming for two separate program services. Second, viewers who purchase digital television sets, presumably to enjoy the higher quality picture and sound offered by digital transmission, will want to continue watching their favorite programs, and broadcasters will want to retain those viewers. Thus, broadcasters will have strong incentives to simulcast programs in both formats and there is no need to impose rigid simulcasting requirements.

If the Commission nonetheless decides to adopt a simulcasting requirement, it should exempt from that requirement all ATV channels that are shared during the transition period by multiple noncommercial stations. Under the proposed legislation, noncommercial stations in many markets would be required to share a single ATV channel. Since HDTV transmissions will effectively utilize the entire 6 MHz bandwidth, it would not be possible to broadcast one station's programs in an HDTV mode while also simulcasting the NTSC programming of the other stations that share the channel. Thus, any requirement that sharing stations simulcast all of their NTSC programming would effectively preclude the use of the

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<sup>27/</sup>

Id.



shared ATV channel for HDTV programming. This would clearly be contrary to public policy and, presumably, the Commission's intent.<sup>28/</sup>

(2) **HDTV Minimum Requirement**

Public Television concurs with the Commission's view that there are strong public interests both in according licensees flexibility to experiment with digital broadcasting and in nationwide distribution of HDTV programming. Given the commitment of broadcasters in general, and the public television community in particular, to the delivery of HDTV programming, and broadcasters' need to stay competitive with other video services that will be providing digital programming, the Commission could achieve both of these public interests by relying on broadcasters to provide a minimum amount of HDTV programming voluntarily.

As discussed above, Public Television has been very active in, and is highly committed to, the implementation of digital broadcast ATV because its programming would be greatly enhanced by production in the HDTV format. As the public becomes familiar with and begins to demand HDTV programming, public broadcasters will want to respond to that demand by providing more HDTV programming. Indeed, it would be in the interest of public broadcasters to increase the amount of HDTV programming they broadcast as viewer demand for such programming grows because there is a direct relationship between viewership and voluntary contributions to support public broadcasting. Thus, there is every reason to believe

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<sup>28/</sup> If the Commission were to adopt a simulcast requirement, it should not define "simulcast" narrowly to require the broadcast of the same program at precisely the same time on both the ATV and NTSC channel, but rather should give broadcasters flexibility to schedule the same program at a different hour/day on the ATV and NTSC channels.